



STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL

<p>ATTORNEY GENERAL OPINION</p> <p>By</p> <p>KRIS MAYES ATTORNEY GENERAL</p> <p>May 10, 2023</p>	<p>No. I23-003 (R23-001)</p> <p>Re: Dental hygienists' authority to administer Botox or perform other procedures not specifically listed in A.R.S. § 32-1281(B)</p>
--	---

To: The Honorable Jennifer Longdon
Arizona House of Representatives

Questions Presented

Under current law, may dental hygienists administer Botox, or perform other procedures for which they are trained but that are not specifically listed in A.R.S. § 32-1281?

Summary Answer

Current law permits a dental hygienist to perform procedures beyond those listed in A.R.S. § 32-1281, such as administering Botox, so long as four conditions are met: (1) the procedure is recommended or prescribed by the supervising dentist; (2) the dental hygienist has received instruction, training, or education to perform the procedure in a safe manner; (3) the procedure is performed under the general supervision of a licensed dentist; and (4) the procedure is not irreversible, as defined by Arizona Administrative Code R4-11-101. *See* R4-11-601 (authorized by A.R.S. § 32-1281(C)). The Attorney General does not opine on whether the administration of Botox constitutes an irreversible procedure within the meaning of R4-11-101, however, as this is a factual determination best left to those with specialized expertise.

Background

In November 2019, the Board of Dental Examiners (BODEX) approved a recommendation from its Botox and Dermal Filler Committee that it “change the scope of practice for dentist and hygienist” to include the administration of Botox and dermal fillers. *See [Minutes from November 15, 2019, Special Board Meeting, Arizona State Board of Dental Examiners](#), at 3.*

In January 2020, H.B. 2134 was introduced to increase the scope of practice for dentists, and would have, among other things, amended A.R.S. § 32-1202 to define the scope of practice for dentistry to include “performance of related adjunctive procedures for any . . . physical condition of the . . . associated tissues of the oral maxillofacial complex, including . . . administering Botulinum Toxin [Botox] and dermal fillers.” Notably, although BODEX approved the recommendation to expand the scope of practice for both dentists and dental hygienists, nothing in H.B. 2134 amended the statutes related to the practice of dental hygienists. H.B. 2134 did not move out of committee, and the committee chairperson requested that a “sunrise application” be filed to support the legislation. *See* A.R.S. §§ 32-3104; 32-3106 (requiring health professional groups seeking an increased scope of practice to submit a report—the sunrise application—to the Legislature explaining a number of factors related to the proposal).

Two years later, the Arizona Dental Association submitted a sunrise application to the Legislature in support of the expansion of the scope of practice for dentists. In January 2022, S.B. 1074 was introduced to increase the scope of practice for dentists. The proposed legislation amended A.R.S. § 32-1202 to define the scope of practice of dentistry to include “performance of related adjunctive procedures for any . . . physical condition of the . . . associated tissues of the oral maxillofacial complex, including . . . administering Botulinum Toxin type A [Botox] and dermal

fillers to the oral maxillofacial complex for therapeutic or cosmetic purposes.” S.B. 1074 passed through the Legislature and was signed by the Governor on March 18, 2022.

In October 2022, the Arizona Dental Hygienists Association filed its own sunrise application seeking to expand the scope of practice of dental hygienists to include, among other things, the administration of Botox and dermal fillers for therapeutic or cosmetic purposes. In January 2023, H.B. 2373 was introduced to expand the practice of dental hygienists to perform dental hygiene assessments, but made no mention of the administration of Botox or dermal fillers. H.B. 2373 passed through the Legislature without amendment and was signed by the Governor on April 11, 2023.

Another bill introduced this year, S.B. 1248, sought to remove the requirement that health professional groups complete a sunrise application when proposing to increase the scope of practice for a health profession. S.B. 1248 passed through the Legislature, but was vetoed by the Governor on March 3, 2023. The Governor explained that while she “agree[d] that we need to make the sunrise application process more effective, efficient, and fair,” repealing the process “without replacing it with a better mechanism w[ould] not address the underlying issues, and poses a threat to the health and safety of Arizonans.” [*Governor’s Letter to Senate President Explaining Veto of S.B. 1248 \(March 3, 2023\)*](#).

The question presented is whether, under current law, dental hygienists may legally administer Botox, or perform other procedures for which they are trained that are not specifically listed in A.R.S. § 32-1281 and not specifically prohibited.

Analysis

When interpreting statutes, courts must “determine the meaning of the words the legislature chose to use.” *S. Arizona Home Builders Ass’n v. Town of Marana*, 522 P.3d 671, 676, ¶ 31 (Ariz.

2023). In doing so, courts “give the words their ordinary meaning, unless the context suggests a different one.” *State ex rel. Brnovich v. City of Phoenix*, 249 Ariz. 239, 244, ¶ 21 (2020). Courts “apply the same rules in construing both statutes and rules.” *Smith v. Arizona Citizens Clean Elections Comm’n*, 212 Ariz. 407, 412, ¶ 18 (2006).

I. If BODEX regulations allow a dental hygienist to perform a procedure not listed in A.R.S. § 32-1281, then no sunrise application is needed to increase the scope of practice for dental hygienists.

When a health professional group seeks to increase the scope of practice for a health profession, it must file a sunrise application with the Legislature. *See* A.R.S. §§ 32-3104; 32-3106. A “health professional group” means “any health professional group or organization, any individual or any other interested party that . . . proposes to increase the scope of practice of a health profession.” A.R.S. § 32-3101(3). To “increase the scope of practice” means “to engage in conduct beyond the authority granted to a health profession by law.” A.R.S. § 32-3101(5). Thus, if a health professional is already permitted by law to engage in particular conduct, then no sunrise application is necessary.

The scope of practice for dental hygienists is defined in A.R.S. § 32-1281. Section 32-1281(B) provides a list of thirteen procedures and tasks that may be performed by dental hygienists. Additionally, § 32-1281(C)(3) provides that BODEX “by rule shall prescribe the circumstances under which a licensed dental hygienist may . . . [p]erform other procedures not specifically authorized by this section.”¹

¹ This provision was added to the statute in 1990. *See* H.B. 2299, 39th 2d Reg. Sess. (Ariz. 1990) (adding the provision granting authority to BODEX to prescribe conditions under which a dental hygienist might perform other procedures); A.R.S. § 32-1281(D)(2) (1990) (“The board shall, by rule, prescribe the circumstances under which a licensed dental hygienist may . . . [p]erform other procedures not specifically authorized by this section.”).

The scope of practice for dentists is defined in A.R.S. § 32-1202. Unlike § 32-1281, this section governing dentists contains no provision allowing BODEX to prescribe by rule additional procedures that a licensed dentist may perform. *Compare* A.R.S. § 32-1202, *with* § 32-1281. Section 32-1202 consists of a single paragraph describing the procedures a dentist may perform. *See* A.R.S. § 32-1202. Conversely, § 32-1281(C) anticipates that hygienists may be asked to perform procedures other than those listed in the statute and grants authority to BODEX to prescribe by rule the conditions under which a dental hygienist may perform those procedures.

Thus, although the Arizona Dental Association was required to file a sunrise application to increase the scope of practice for dentists, the same does not necessarily hold true for dental hygienists. If BODEX's rules prescribe circumstances under which a licensed dental hygienist may "perform other procedures not specifically authorized" by § 32-1281, then those procedures do not constitute "conduct beyond the authority granted to a health profession by law" and performing those procedures would not meet the definition of "increase the scope of practice" in A.R.S. § 32-3101(5). As discussed below, R4-11-601, as currently written, authorizes dental hygienists to administer Botox, as well as perform other procedures not specifically authorized by § 32-1281, provided that several conditions are met and the procedure is not "irreversible."

Finally, neither the fact that the Arizona Dental Hygienists Association filed an unsuccessful sunrise application to increase the scope of practice for dental hygienists to include the administration of Botox and dermal fillers, nor the Governor's veto of S.B. 1248, affects the meaning of the statute's plain language. *See City of Flagstaff v. Mangum*, 164 Ariz. 395, 401 (1990) ("Rejection by the house or senate, or both, of a proposed bill is an unsure and unreliable guide to statutory construction."). Nothing in A.R.S. §§ 32-1281, -3101(5), or -3106, prevents the Arizona Dental Hygienists Association from filing a sunrise application. But the plain language

of A.R.S. § 32-1281(C)(3) provides another way (through administrative rulemaking) for dental hygienists to receive authorization to perform procedures not specifically listed in the statute.

II. Current BODEX regulations allow dental hygienists to perform procedures not listed in A.R.S. § 32-1281 provided they meet certain conditions and the procedure is reversible.

As currently written, R4-11-601 allows dental hygienists to perform procedures not listed in A.R.S. § 32-1281 under certain conditions. R4-11-601 provides in relevant part:

- B. A dental hygienist may perform a procedure not specifically authorized by A.R.S. § 32-1281 when all of the following conditions are satisfied:
 - 1. The procedure is recommended or prescribed by the supervising dentist;
 - 2. The dental hygienist has received instruction, training, or education to perform the procedure in a safe manner; and
 - 3. The procedure is performed under the general supervision of a licensed dentist.
- C. A dental hygienist shall not perform an Irreversible Procedure.

This rule has been in place since 1999, *see* [5 Ariz. Admin. Reg. 580, 593](#), and it expands the procedures a dental hygienist may perform, subject to certain conditions. First, the supervising dentist must have prescribed or recommended the procedure. R4-11-601(B)(1). Thus, the rule does not permit a dental hygienist to exceed a dentist’s scope of practice. Second, a dental hygienist must receive “sufficient instruction, training, or education to perform the procedure in a safe manner.” R4-11-601(B)(2). BODEX is responsible for determining whether a dental hygienist has received sufficient instruction or training to perform a procedure not specifically authorized by A.R.S. § 32-1281. *See* A.R.S. § 32-1207(A)(1) (“The board shall . . . [a]dopt rules that are not inconsistent with this chapter for . . . regulating the practice of dentists and supervised personnel[.]”); *see also* R4-11-605, -607(B)(4) (establishing a Dental Hygiene Committee, which has the duty to, among other things, “make recommendations to the Board concerning statute and rule development which affect dental hygienists’ education, licensure, regulation, or practice”).

Third, the procedure must be performed under the supervision of a licensed dentist. R4-11-601(B)(3). And finally, the procedure must not be an “Irreversible Procedure,” R4-11-601(C), which is defined as “a single treatment, or a step in a series of treatments, that causes change in the affected hard or soft tissues and is permanent or may require reconstructive or corrective procedures to correct the changes,” R4-11-101. This restriction on performing irreversible procedures prevents a dentist from delegating some tasks to a dental hygienist.

Assuming that the administration of Botox is not an “Irreversible Procedure,” current law would permit an adequately trained or educated dental hygienist to administer Botox under the supervision of a licensed dentist when prescribed or recommended by the supervising dentist.

Whether a particular procedure is “irreversible” however, is a factual determination best left to those with specialized expertise, such as BODEX. *See* A.R.S. § 32-1207(A)(1); R4-11-607 (B)(5)(authorizing the Dental Hygiene Committee to provide “advice to the Board on standards and scope of practice which affect dental hygiene practice”). Thus, the Attorney General does not opine on whether Botox constitutes an irreversible procedure within the meaning of BODEX’s regulations.

Conclusion

The statute regulating dental hygienists, A.R.S. § 32-1281, grants BODEX the authority to prescribe conditions under which dental hygienists may perform procedures not specifically authorized by the statute. BODEX has prescribed these conditions in R4-11-601(B)–(C). So long as the administration of Botox is not an “Irreversible Procedure” under R-4-11-601(C) and is performed in accordance with the requirements of R4-11-601(B), current law allows dental hygienists to perform the procedure.

Kris Mayes
Attorney General